

Appl. No. 09/871,240
Amdt. dated February 2, 2004
Reply to Office Action of December 2, 2003

REMARKS

In the Office Action dated December 2, 2003, claims 42 and 43 were rejected under 35 U.S.C. § 112, ¶ 2; claims 2 and 27 were rejected under 35 U.S.C. § 102 over Metcalfe (US 2002/0166668); claim 6 was rejected under § 102 over Reid (U.S. Patent No. 6,109,355); claims 8-11 and 39 were rejected under § 102 over Mohaupt (U.S. Patent No. 4,081,031); claims 3 and 35 were rejected under § 103 over Arizmendi (U.S. Patent No. 5,941,313) and Wuenschel; claim 5 was rejected under § 103 over Castano-Mears (U.S. Patent No. 6,457,518) and Wuenschel; and claim 7 was rejected under § 103 over Gazda (U.S. Patent No. 4,750,560) and Reid.

Applicant acknowledges the allowance of claims 37, 40 and 41, and the indication that claims 28-34, 36, and 38 would be allowable if rewritten in independent form.

REJECTION UNDER 35 U.S.C. § 112, ¶ 2

Claim 43 has been amended to add the word "superplasticity" at the end of the claim. The Examiner has interpreted claim 42 as including the word "superplasticity." Therefore, this amendment of claim 42 would not require a new search and thus should be entered for purposes of appeal.

REJECTIONS UNDER 35 U.S.C. §§ 102 AND 103

In Applicant's prior Reply, Applicant pointed out that none of Metcalfe, Wuenschel, Reid, and Mohaupt discloses a superplastic material. In response to the arguments submitted previously, which are hereby incorporated by reference, the present Office Action stated that Applicant on pages 3 and 4 of the specification defines a superplastic material as a soft metal, such as aluminum, which exhibits high elongation or deformation without breaking. Therefore, according to the Office Action, the materials employed by Metcalfe, Wuenschel, Reid, and Mohaupt satisfy Applicant's definition of superplasticity. 12/2/03 Office Action at 7. The portion of the specification cited by the Examiner refers to some characteristics of a superplastic material. The cited portion of the specification also lists some example materials that can be superplastic. However, the term "superplastic" is further defined by the specification as follows: "elongation to failure in excess of 200% are usually indicative of superplasticity." Specification, page 4,

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lines 10-11. Thus, a superplastic material does not cover just any soft metal that exhibits high elongation or deformation without breaking. A superplastic material has defined characteristics that cannot be satisfied by the materials disclosed in the cited references.

The references Metcalfe, Wuenschel, Reid, and Mohaupt do not provide any indication or any suggestion that their disclosed materials can be considered superplastic materials. The Office Action seems to suggest that superplastic materials were notoriously well known. If that was the case, and if Metcalfe, Wuenschel, Reid, or Mohaupt desired materials that exhibit superplastic behavior, then such references would have stated so. The fact that the references are silent with respect to superplasticity is an indication that their disclosed materials do not exhibit superplastic behavior.

In view of the foregoing, it is respectfully submitted that the claims are allowable over the cited references. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (SHL.0102US).

Respectfully submitted,

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